1950.

File No. S.Bij. 5/50

Examined

Legal DEPARTMENT

~~A~~ BRANCH

Subject:— Bijapur Suit

Civil Suit No. 431 of 1948

Laxmappa Parappa Karadi Plff

Vs.

The Governor General in Council } - Defts.

For possession of a house in the Village of Ilkal (Taluka Hundgund) which was taken on Lease by the Central Govt. for the post and telegraphs office.

E
1.22

S. Bijapur 5/50

File No.

Gld. Secrt. Slip 24-B

S.Bij-5/50

C O N T E N T S.

Legal Department File No. S. Bij. 57/58.

Sr.No.	R.I./O.No.	Subject	Pages.

Suits Bijapur.

C. S. No. 431 of 1948

L. P. Karadi Plff.

V/S

The Governor General in Council

Deft.

For possession of a house in the village of Ilkal, which was taken on lease by the Central Govt. for the Ports and Telegraphs Office

1-48.

Presented on 16-10-1948.

Sd.x x x
Clerk of the Court.

Civil Suit No.431 of 1948.

In the Court of the Civil Judge, (Senior Dn.).
Bijapur.

1. Laxmapa Parappa Karadi Devang(Hindu) age, 45, Occupation Trade, residing at Ilkal, Taluka Hungund, Dist.Bijapur. .....Plaintiff.

Vs.

1. The Governor General in Council... Defendant

The summons to be served on the Government Pleader, Bijapur.

Claim Rs.258/-.

The plaintiff states as follows :-

1. The Plaintiff is the full and exclusive owner of a house situate on C.T.S.No.900/C-2 of the town of Ilkal in Hungund Taluka. T' is suit is for possession of the said house from the Post & Telegraph Department of the Defendant to which it had been leased on a five years' lease by one Ramachandra Parappa Karadi, expiring on 10-6-1948; arrears of rent due as well as damages for the unauthorisdd use and occupation thereof from 16-6-1948 till recovery of possession.

2. The suit house was the property of the Hinduxx undivided family consisting of the plff, his brothers including Ramachandra and their uncles. The coparceners of the family came to a partition of their joint ancestral properties of which the suit house was one, on 30-11-1947 and the plff. got the suit house and several other properties to his share; and since then he is the full and exclusive owner thereof and the suit house has been entered in the City Survey Register in the nam of Plff. Since the date of the partition the Plff. is entitled to the rent of the

3 ††

4. The deed of lease appears to have been executed by Ramachandra in his individual capacity describing the suit house therein as his own property. The agreemebt alleged to be embodied therein as to the option is without consideration and not binding even on Ramchandra. It is further of a personal nature and may if at all, bind Ramchandra alone. The agreement was inno way binding on the coparceners of the joint family so long as it was joint and is not at all binding either in law or equity on the plff. who has become full owner and exclusive owner of the suit house after and in consequence of the partition. The Plff. does not derive his claim to the suit house through Ramchandra but any virtue of a right vested in the Plff. long before Ramchandra's lease. The Plff. does not claim the suit house, under Ramchandra but independently of him.

5. The agreement in question cannot in law be enforced against the Plff. as the defts' subordinates seek to do. The peculiar circumstances of the case would render such enforcement, assuming it could be made, so inequitdle, unconscionable and improper as to amount to a violation of law regarding the judicial use of the Court's discretion.

6. The action of the postal authorities in resisting the claim of the plff. is not in accordance with law or equity; the cause of action for this suit arose when they definitely refused to vacate the premises in March 1948.

7. The Court fees are paid on one year's rent for possession, arrears of rent due @ r.4 P.M. and damages @ 15/- p.m. for illegal use

use and occupation before suit (Rs. 144 plus 54 plus 60 = 258). The value for jurisdiction and pleader's fees is the same.

8. This suit being against Government has been brought in this Court. In view of the questions of fact and law involved in the case, this suit has been filed on the regular side, instead of as a Small Cause suit.

9. Notice under Section 80 C.P.C. has been served on the deft in accordance with law more than two months before this suit. No definite reply has been vouchsafed to it as yet.

10. Prayer :-

(1) Possession of the suit house be awarded to the Plff. from the Deft's subordinates in the Post & Telegraph Department concerned.

(2) The arrears of rent due as claimed may be awarded tothe Plff. from the same.

(3) Damages for the illegal use and occupation before suit, as claimed and further damages at the same rate from the date of suit till recovery of possession by the Plff. may be awarded tothe Plff.

(4) Costs of suit may be awarded.

(5) Any further or other relief the Plff. maybe found to be entitled to may also be awarded.

Dated.
15-10-1948. Sd. x x x

I, Laxmappa Parappa Karadi, Devang (Hindu) 45, Trader of Ilkal do solemnly affirm that what is stated in paras 1 to 10 above are true to the best of my knowlegde and belief.

Sd. x x x

Filed in Court on 16-10-1948.

Sd. N.P. Desai,
Pleader.

L KPH's
Jan 1917

5

The papers should be returned to the P.M.S. with a request to forward a copy of the award and deed of lease between the Postal department and Mr. R. P. Karak. and also a copy of the Original Deed as the Solicitor to the Central Govt. in Bombay in this case. The P.M.S should be requested to treat this very urgent.

RL
2/1/17

In haste

Copy of letter No. Nil dated 22-12-1948 from the Solicitor to the Central Govt. at Bombay, Fort Chambers, Hamam St., Bombay to the P.M.G., Bombay.

--

Re: Suit: Notice under Sec. 80 of Civil Procedure Code on behalf of Mr. L.P. Kardi of Ilkal regarding ejectment of P.O. at Ilkal.

With reference to your letter No. BRR-517/IV of the 2nd instant in the above matter I note that the Rent Restriction Act is not applicable to the town of Ilkal.

2. On going through the correspondence I find that there is a Covenant on the part of the Lessor giving an option of renewal of the Lease for a period of five years further in the Lease executed between the parties. I note the contention of the said Mr. Kardi that the original Lease was executed by his brother in his individual capacity and that on partition of the joint family properties the building of the P.O. has fallen to his share and that he is not bound by the covenants and conditions contained in the original Lease. As however the Rent Restriction Act is not applicable no protection under it can be taken by your Department and hence your department will have to rely upon the option of renewal as contained in the Lease. Ordinarily the covenant for renewal is one running with the land and is binding on the property into whosoever's hand it goes. But I should like to peruse the Lease before I can give any definite opinion. I shall therefore thank you to send me the lease at your early convenience.

Copy of letter No. Nil dt. 10-2-1949 from the Solicitor to the Central Govt. at Bombay, Bombay to the P.M.G., Bombay.

--

Re: Lease of Ilkal Post Office Building.

With reference to your letter of the 16th instant bearing BRR-517/II I have now perused the original Lease sent to me.

2. I confirm my opinion contained in my letter of the 22nd of December last that the Covenant for renewal is one running with land and is therefore binding on the present owner of the property as the property has come into his hands, the present owner is therefore bound to execute a new Lease in favour of the Department.

3. In case however, a suit is filed the same may be defended and possession of premises retained.

4. I return the papers herewith.

Copy of letter No. Nil dt. 23-3-1949 from the Solicitor to the Central Govt. at Bombay, Bombay to P.M.G., Bombay.

--

Re: Lease of Ilkal P.O. Building.

I have your letter No. BRR-517/II of yesterday's date delivered in my office this morning.

2. I am of the opinion that the arrears of rent may be paid to the present owner Mr. L.P. Karadi on the strength of the letter from the previous landlord which you have stated mentioned inter alia that the rent may be paid to the present owner.

FORM OF LEASE.

THIS INDENTURE made the 17th day of July 1943 between Ramchandra son of Parappa Kardi Village Ilkal thana Ilkal in the district of Bijapur hereinafter called "the Lessor" (which expression shall where the context so admits include his heirs and legal representatives and assigns)of the one part and the Governor General of India in Council hereinafter called "the Lessee" of the other part.

WITNESSETH as follows:-

In consideration of the Rent hereinafter reserved and of the covenants and agreements by the Lessee hereinafter contained.

The Lessor doth hereby demise to the Lessee the below mentioned house and outhouses together with the piece of land on part where of they are erected and all the easements and appurtenances belonging there-to more particularly described in the schedule below:-

To Hold the said premises unto the Lessee for a period of 5 (five) years commencing from the 16th day of June 1943 at a monthly rent of Rs.Twelve annas nil pies nil for each English calendar month (which amount shall cover and include all Government and Municipal taxes including the Urban Immovable Property Tax and all which taxes shall be payable by the Lessees) such rent to be paid to the Lessor at Ilkal or such other place as the Lessor may in writing direct any extra expense to the Lessee thereby entailed being deducted from the amount of such instalment of rent and to be paid on or before the fifteenth day of the month following.

The Lessor hereby covenants with the Lessee that he will at his own expense pay the taxes and keep the said premises wind and watertight and in good and tenantable repair and condition and in particular white or colour wash annually such parts thereof as are white or colour washed and will at all times keep the electric light plant and fittings installed in the said premises in good and serviceable order and condition and in the event of any leakage occuring or being suspected therein will forthwith make all necessary tests and repairs any such leakage and that if the Lessor shall fail or neglect to observe and perform his obligations under this covenant the Lessee may pay the taxes or carry out the necessary repairs to the building and to the Electric Installation and deduct the amount or cost from the rent. And further that the Lessee shall have the option of renewing the lease of the said premises for a further term of 5 years on giving notice of such intention to the Lessor at least 3 months before the expiration of the lease hereby granted and the Lessor shall forthwith execute and deliver to the Lessee a renewed and duly registered lease of the said premises for such further term of years at the same rent and under the same conditions as are herein contained excepting only this condition as to renewal. Provided that the notice for renwal of the lease as aforesaid shall be deemed sufficient if signed by the Postmaster General, Bombay, the Superintendent of Post Offices, Belgaum Division or Sub Postmaster Ilkal. The Lessee hereby covenants with the Lessor that he will pay the rent hereby reserved at the time and in the manner aforesaid and will not make any assignment of the premises or any structural alterations or additions thereto without the consent of the Lessor and will at all reasonable times permit the Lessor to enter upon the premises for the purpose of effecting the repairs that may be necessary. Provided further and it is hereby agreed that the Lessee shall be at liberty to determine the tenancy hereby created including any extension at any time by three calander month's previous notice in writing to the Lessor and may remove at any time all safes, letter-boxes, counters, fixtures and fittings required for carrying on postal or telegraph business and the service of the Post or telegraph office which have been provided by the Lessee and which may have been attached or embedded in the earth or the Walls of the said demised premises.

The Lessor hereby further covenants with the Lessee that this document shall be presented for registration by the Lessor and registered at the cost of the Lessor.

P.T.O.

15

Bijapur Civil suit No 431/1948

~~Introductory Note.~~

Bijapur Civil Suit No.431 of 1948.

The suit is for possession of a house in the village Ilkal which was leased to the Posts and Telegraphs Department for five years ending 16th June 1948. The lease was executed by the plaintiff's brother. There was an express covenant of renewal for a further term of five years on the expiration of the lease. The Postal Department gave due notice exercising the opition of renewal and thereupon the plaintiff demanded possession of the house on the ground that it was a joint family property which had fallen to his share in a family partition and that the lease was not binding on him.

2. The suit is defensable. The covenant for renewal is a covenant running with the land and binds the assignees ~~and~~ of the lessor. The option has been properly exercised by the Postal Department and the plaintiff is, therefore, liable to renew the lease for a further term of five years. The defence of the suit may be sanctioned on the lines of the accompanying brief.

RW 13/9/49

~~R.L.A.~~ Asst. The brief as amended may be approved

17316
24-10-49
A.

RC 5/10

R.L.A. A clean copy should be typed post

6/10

Subd.
A clean typed copy put up accordingly.
7/10.
R.L.A.

Chief Secy (P&D)

P. & D. 10 OCT 1949

No 11296
10-1949 /15-4-49

5/13

Civil Suit No.431 of 1948.

In the Court of the Civil Judge, Senior Division,

At Bijapur.

1. Laxmappa Parappa Karadi
of Ilkal taluka Hungund. ... ... Plaintiff.

Vs.

1. Governor General in Counvil. ... Defendant.

The following is the written statement of the defendant in this suit.

1. The suit is not maintainable in its present form. In a suit against the Central Government, the authority to be ~~affected~~ named as the defendant is the Dominion of India. The suit filed against the Governor General -in-Council is not maintainable.

2. The defendant denies the plaintiff's allegations in paragraphs 1 and 2 of the plaint that the plaintiff is the full and exclusive owner of the suit house; ~~and~~ that it was the property of the Hindu undivided family consisting of the plaintiff and his brothers and uncles; and that the suit house fell to the plaintiff's share in an alleged family partition of 30th November 1947.

3. Assuming without admitting that the suit property was the joint family property as alleged by the plaintiff, the defendant submits that the lease of the house in favour of the defendant was executed by the ~~plaintiff~~ plaintiff's brother Ramchandra as the manager of the joint family and in the course of the ordinary management of the property by Ramchandra. As the manager of the joint Hindu family Ramchandra had the power to alienate for value the joint family property so as to bind the plaintiff's interest therein provided the alienation was for legal necessity or for the benefit of the estate. This defendant submits that the lease of

of the suit house did benefit the estate in as much as the property was kx put to profitable use especially by the renewal clause which was intended to secure the benefit for a longer time as the rent and terms offered by Government were clearly more advantageous. The lease was further made with the consent or concurrence of the plaintiff. The plaintiff has not alleged that it was made without such consent and therefore invalid in its inception. The plaintiff is therefore not entitled to contend that the lease of the suit property executed by his brother is invalid.

4. This defendant further submits that the alienation contemplated by the rule of Hindu Law is by way of sale and mortgage or by way of permanent lease only and does not include short term leases. The lease of the suit house was for a short term of five years only with an option of renewal for a further term of five years. There was thus no alienation as contemplated by law and therefore it was immaterial whether the lease executed by Ramchandra was with or without legal necessity,or with or without the consent of other coparceners.

5. It is further submitted that the lease executed by the plaintiff's brother expressly provides that the defendant shall have an option of renewing the lease for a further term of five years on giving notice of such intention to the lessor atleast three months before the expiration of the lease and thereupon the lessor shall forthwith execute and deliver to the lessee the renewed and duly registered lease for a further term of five years at the same rent and under the same conditions except the condition as to renewal Such notice was duly given by the Superintendent of Post Offices on 2nd February 1948 and therefore the Post & Telegraphs Department having exercised the

SCHEDULE.

House and ground situat-ed at Ilkal in the Registration District of Bijapur and thana of Ilkal the said land containing by measurement 1416 Sq. ft and being bounded:

On the North by open land ciry survey No. 900A
On the South by Municipal Road,
On the East by Municipal Road,
and On the West by remaining portion of the buinding owned by the landlord.

IN WITNESS whereof Supdt. of Post Offices, Belgaum Division, by order and direction of the Governor General of India in Council acting in the premises for and on behalf of the Governor-General of India in Council and Ramchandra Parappa Kardi have hereunto set their hands the day and year first above-written.

Signed by RAMCHANDRA PARAPPA KARDI

Presence of THE SUB POSTMASTER, ILKAL. sd/- R.P. KALSAPUR
S.P.M. Ilkal.
17-7-43.

signed by 'xx'
S.P. Belgaum Division.

presence of
Clerk to S.P., Belgaum Division.

55 17

the option for renewal at the proper time laid down for the lease the defendant has the right to occupy the suit premises for a further term of five years ~~at~~ on the same terms and conditions with effect from 16th June 1948, and the plaintiff as the assignee of the original lessor is liable to execute the lease in favour of the defendant.

6. The plaintiff's allegations regarding the alleged family partition are not admitted. The plaintiff is put to strict proof thereof.

7. It is therefore submitted that the suit fails and the Court may be pleased to dismiss the same with costs.

District Government Pleader,
Bijapur.

I, _____ District Government Pleader, _____ do hereby declare that what is stated in paragraphs 1 to 7 above is true according to the information received and believed to be true. This verification is made at _____ on the _____ day of _____ 1949.

District Government Pleader,
Bijapur.

Suits.

Bijapur.

For possession of a house in the village of Ilkal (Taluka Hundgund) which was taken on lease by the Central Government for the Posts and Telegraphs Office.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 12651.

Bombay Castle, 9th November 1949.

Letter from the Post Master General, Bombay, No. B-R-R-517/II, dated the 31st May 1949—Forwarding the papers in the suit noted in the margin; and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION). BIJAPUR CIVIL SUIT NO. 431 OF 1948.

Laxmappa Parappa Karadi ... ... Plaintiff;

versus

The Governor General in Council ... ... Defendant.

Memorandum to the District Government Pleader, Bijapur No. 12146, dated the 29th October 1949—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

To

*The Political and Services Department,
*The Post Master General, Bombay,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1949.

Copy forwarded for information and guidance to

Submitted after issue
& File in S. Bijapur 150 (new file)
10/5
A.S. 10/5

~~6+~~
21

BIJAPUR CIVIL SUIT No. 431 *of* 1948.

Chronological Statement of Facts.

The suit is filed against the Central Government (Posts and Telegraphs Department).

The plaintiff prays for possession of a house in the village of Ilkal (Taluka Hungund) which was taken on lease for the Posts and Telegraphs office.

2. By an indenture, dated 17th July 1943, between the plaintiff's brother Mr. R. P. Karadi and the Superintendent of Post Offices, Belgaum Division, on behalf of the Governor General in Council, the suit house was taken on lease by the Central Government for a period of five years commencing from the 16th June 1943, at a monthly rent of Rs. 12. Under the terms of the lease the lessee had the option of renewing the lease for a further term of five years on giving notice of such intention to the lessor at least three months before the expiration of the lease. The Superintendent of Post Offices, Belgaum Division or the Sub-Post Master at Ilkal was authorized to give the notice for the renewal of the lease.

3. On 2nd February 1948, the Superintendent of Post Offices, Belgaum, gave notice to Mr. R. P. Karadi, the land lord intimating to him that the suit premises would be occupied by the Posts and Telegraphs Department for a further period of five years from the 16th June 1948, at the same rent and under the same conditions as contained in the original lease. In reply to this notice Mr. R. P. Karadi informed the Superintendent by his letter, dated 5th February 1948, that he required the house for his own use and therefore it should be vacated " as per our agreement, dated 26th July 1943. On 13th February 1948, the Superintendent again wrote to the land lord that the Department had the option of occupying the premises for a further period of five years and that that option had been exercised by giving the land lord a notice, dated 2nd February 1948.

4. On 16th February 1948, the plaintiff's pleader informed the Superintendent of Post Offices that the plaintiff was not agreeable to renew the lease for a further period of five years, that the lease has been executed when the family was joint, that in the partition the suit house had fallen to the share of the plaintiff, that the terms of the lease were not binding upon him, that he wanted to occupy the house for his own residence, and that therefore the building should be vacated on the expiration of the period of the lease. The Superintendent again informed the plaintiff's pleader on 8th March 1948, that the building would be continued to be occupied for five years from 16th June 1948, and he asked the plaintiff to produce the partition deed and to take early steps for executing the lease for five years from 16th June 1948. The plaintiff's brother Mr. R. P. Karadi was also called upon to produce the partition deed, but he replied that he did not have any partition deed nor had he any further connection with the Post Office building and requested that further communication should be made with the plaintiff.

5. After some further correspondence the plaintiff gave a notice of suit under section 80 of the Civil Procedure Code and on 16th October 1948 he filed the present suit in the Court of the Civil Judge, Senior Division, Bijapur.

Grounds of Defence.

The plaintiff admits in paragraph 1 of the plaint that the suit house had been leased by his brother to the Posts and Telegraphs Department for a period of five years commencing 16th June 1948. He contends that the suit house belonged to a Hindu undivided family consisting of himself and his brother the original land lord and their uncles and that in a family partition effected on 30th November 1947, the suit house was allotted to his share and since then he has become the full and exclusive owner thereof. He claims possession of the suit house on the ground that he needs it for his own residence.

2. The provisions of the Bombay Rent, Hotel and Lodging House Rates Control Act of 1947 have not been extended to the village of Ilkal in which the suit house is situated and therefore it is not possible to claim protection under that Act. But as stated earlier in the statement of facts, the lease executed by plaintiff's brother contains a covenant for renewal. It is expressly provided that the lessee shall have an option of renewing the lease of the said premises for a further term of five years on giving notice of such intention to the lessor at least three months before the expiration of the lease and the lessor shall forthwith execute and deliver to the lessee a renewed and duly registered lease of the said premises for such further term of years at the same rent and under the same conditions as contained in the original lease excepting conditions as to renewal. A covenant for renewal is a covenant running with the land and it confers an immediate right to a further term and is exercisable by the assignees of the lessee and binds the assignees of the lessor.' (See. Mulla : Transfer of Property Act, page 710, 3rd edition). The notice required to be given was duly given by the Superintendent of Post Office on 2nd February 1948, and therefore the Post and Telegraphs Department having exercised the option for renewal at the proper time laid down in the lease, that Department has the right to occupy the suit premises for a further term of five years on the same terms and conditions as contained in the original lease except the condition of renewal, with effect from 16th June 1948, and the plaintiff as the assignee of the original lessor is liable to execute the lease in favour of the Department.

3. The plaintiff however tries to avoid this liability by contending as follows :—

(i) that the original deed of lease was executed by his brother in his individual capacity,

(ii) that the option as to renewal is without consideration and not binding even on his brother.

(iii) that it was not binding on the co-parceners in the joint family and is not binding on the plaintiff who has become the owner of the suit house after and in consequence of the partition,

(iv) that the plaintiff does not claim the suit house from his brother but by virtue of right vested in him long before the lease.

All these contentions are based upon the misconception of the rules of Hindu Law. In the first place the allegation that the suit house was the joint family property of plaintiff and his brother and others should not be admitted but the plaintiff should be put to strict

proof thereto. Secondly, assuming that the suit house was the joint family property, the plaintiff acquiesced in the lease executed by his brother for a period of nearly five years without raising any objection. The plaintiff has not stated who was the 'Karta' and manager of the joint family but the fact that he did not object to his brother's dealings in the joint family property, or in the payment of rent to him ~~in the case~~ that Ramchandra the brother was probably the Manager of the family. The management of the joint family property is vested in the manager of the joint family for the time being and in the course of management he has the power or implied authority to do all things necessary for (i) the purposes of the family or (ii) the benefit of the estate. This power extends even to alienation of the joint family property (see Gupte's Hindu Law, 2nd edition, page 138). The manager of a joint Hindu family has the power to alienate for value joint family property so as to bind the interest of adult and minor co-parceners provided that the alienation was for legal necessity or for the benefit of the estate. Even if the alienation is made by the manager without legal necessity, but with the consent of all other co-parceners, they being all adults, the alienation is valid in its entirety. (See Mulla Hindu Law, 10th Edition, pages 279-80). That the lease of the suit house by Ramchandra himself might have been made with the consent of concurrence of the plaintiff and other co-parceners is indicated by the fact that the plaintiff admits the execution of the lease by Ramchandra, that he does not allege that it was made without such consent and therefore invalid in its inception, and that he did not demand possession of the suit house immediately from the date of the alleged partition but only after the expiration of the lease executed by his brother. But it should also be contended that the alienation contemplated by the rule of Hindu Law mentioned above is by way of sale or mortgage or by way of permanent lease only and does not include short term leases (51 All. 285). In the present case there was neither sale nor mortgage, nor a permanent lease by the plaintiff's brother. (See Basdeo Narain v. Mahammad Yusuf I.L.R. 51 All. 285 here a lease was held to be an alienation because it was a permanent lease). The lease was only for a short term of five years with an option of renewal for a further term of five years. This does not amount to an alienation and therefore it was immaterial whether the lease was granted with or without legal necessity or with or without the consent of the other co-parceners.

4. The management of the joint family property is ordinarily in the hands of the 'Karta' or manager and the lease in this case could only be said to have been made in the course of the ordinary management of the property by Ramchandra. Even assuming that such lease amounts to alienation there was sufficient necessity for the same and it benefited the estate in as much as the property was put to a profitable use. The renewal clause was intended to secure the benefit for a longer time as the rent and terms offered by Government were clearly more advantageous.

5. In these circumstances the plaintiff's contention that the lease is not binding on him has no substance.

6. The alleged partition further appears to be bogus. It seems that the plaintiff and his brother have colluded together in making a show of partition in order to circumvent the liability for renewal of lease In paragraph 2 of the plaint, it has been alleged that the partition was effected on 30th November 1947, when the plaintiff is alleged to have become the exclusive owner of the house. Now the notice exercising the option of renewal was given by the Superintendent of Post Offices on 2nd February 1948 to the plaintiff's brother R. P. Karadi, the original landlord. In his reply the landlord said, "In reply we beg to inform your kind self to vacate our building as per our agreement, dated 26th July 1943, as we require the same for our use". There is no reference whatsoever to the partition alleged to have been effected on 30th November 1947. If the plaintiff had become the owner of the suit house on 30th November 1947, the landlord's reply would have been different. It was only on 24th March 1948 that the plaintiff's brother informed the Superintendent of Post Offices that the plaintiff had become the owner of the property. Another significant circumstance is, that till the end of February 1948, the rent of the house had been paid to the original lessor Mr. R. P. Karadi and in his letter, dated 21st July 1948, the plaintiff claimed rent from March 1948, whereas in the plaint he has asked for rent from 30th November 1947 i.e. the date of alleged partition. All these circumstances clearly go to show that the allegation of partition was made only as an after thought when the Superintendent of Post Offices reiterated his intention to exercise the option of renewal in his letter, dated 5th February 1948.

7. For all these reasons, therefore, it should be contended that the suit fails and must be dismissed with costs.

S. By. 5/50

7/25

Received on :- 16-10-48. Decided on:- 14-12-1950.

Registered on :- 21-10-48. Duration :- 2-1-28.

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION

AT BIJAPUR. Ex. 45.

Civil Suit No: 431 of 1948.

Pleaders.

Shri N.P.Desai. 1. Laxamappa Parappa Karadi of Ilkal ... ... Plaintiff.

Vs.

Shri.K.R.Rao. 1. "The Dominion of India "

claim Rs. 258/-

J U D G M E N T.

Suit for possession and for compensation.

2. The Plaintiff is based on the allegations that the suit house was let out to the Post and Telegraph Department by one of the coparceners Ramchandra Parappa Karadi for a term of five years, that the lease expired on 16-6-1948, that the house originally belonged to the joint and undivided Hindu family, that there was a division on 30-11-1944 that the house in question was allotted to the plaintiff at such a division that thereupon his name was mutated in the City Survey Record that he requires the house for his own use and occupation, that the house needs repairs, that notice was served on the Post and Telegraph Department to quit before the expiration of the lease, that his request was not complied with, that the post and Telegraph Department renewed the lease for a further term of five years relying on the terms of the lease, that the rent in arrear was not paid to the plaintiff and that the notice under Section 20 Civil Procedure Code has been given.

3. The plaint sets forth that the lease was entered into by Ramchandra in his "individual" capacity treating the house as his own property, that the clause empowering the Postal and Telegraph Department to come into possession of the house for a further term of five years was devoid of consideration and

not binding on the lessor or on the plaintiff herein that only Ramchandra the lessor was bound by it, that the joint family is not bound by it, that the plaintiff is now the owner of the suit house and that the cause of action arose in March 1948.

4. The following defence pleas are raised in the written statement of defendants:

(a) The suit should have been instituted against the Dominion of India and not against the Governor General in Council.

(b) The Plaintiff is not the owner of the suit house.

(c) The house did not belong to the joint family.

(d) The house did not fall to the Plaintiff's share at the division.

(e) Ramchandra let out the property as manager of the joint family, and for the benefit of the joint family.

(f) The house was let out with the assent of the Plaintiff.

5. The following Issues were framed in the case :-

1. Whether the Plaintiff is the exclusive owner of the house in suit as alleged in para of the plaint?

2. Whether the house in question was of the ownership of the joint and undivided Hindu family consiting of the plaintiff and the ~~xx~~ other members ?

3. Whether there was a partition in 1944 ?

4. If so, whether at such a partition the suit house fell to the share of the plaintiff ?

5. Whether the plaintiff in consequence is entitled to possession of the house ?

6. Whether Ramchandra let out the property " in his individual capacity " as alleged in para 4 of the plaint ?

7. If so, whether the lease is binding on the Plff ?

8. Whether the clause providing that the defendant could renew the lease for further term of five

7+29

years was devoid of consideration as alleged in the plaint ?

9. If so, whether it is binding on the lessor (Ramchandra) ?

10. Whether the lease is binding on the joint family?

11. Whether the lease is unconscionable as alleged in para 6 of the plaint ?

12. Whether the suit against the defendant is tenable

13. Whether the defendant is properly impleaded ?

14. Whether the rent is in arrears as alleged in the plaint ?

15. If so, what amount should be awarded ?

16. Whether Ramchandra let out the property in his capacity as the manager of the joint family ?

17. Whether the lease was for the benefit of the estate as alleged in the written-statement ?

18. If so, whether it is binding on the plaintiff ?

19. Whether the lease was impelled by legal necessity?

20. In any case, whether it is binding on the Plaintiff

21. Whether defendants came into possession of the house pursuant to the lease ?

22. Whether defendants came into possession and continued in possession of the house with the knowledge and consent express or implied and acquiescence on the part of the Plaintiff ?

23. Whether proper Court fee is paid ?

24. Whether the plaintiff is entitled to damages assessed at Rs. 60 ?

25. What order ?

6. My findings are :-

1. Yes, after the partition.

2. Yes.

3. Yes.

4. Yes.

5. No.

6. No.

7. The lease is binding on the family.

8. No.

9. Is binding.

10. Yes.

11. No.

12. The frame of the suit is not defective.

13. Yes after amendment.

14. No.

15. Does not arise.

16. Yes.

17. Yes.

18. Yes.

19. It was an act of proper management.

20. Is binding.

21. Yes.

22. Yes.

23. Yes.

24. No.

25. General Issue.

R E A S O N S.-

7. Plaintiff, his elder brother, Ramchandrappa and their uncle Iswarappa constituted a joint and undivided Hindu family. The suit house was one of the houses belonging to the joint family. When the family was joint, Ramchandrappa let out the house to the Post and Telegraph Department for a term of five years commencing from 16th June 1943. The lease contained a convenant for renewal of the lease for a further term of five years. The Post and Telegraph Department in due course gave notice of their intention to take a renewal before the expiry of the term. The plaintiff's case briefly stated is that at a partition effected in 1944 the suit house fell to the share, that he requires the house for his own use and occupation, that Ramchandrappa was not the manager, that his uncle Ishwarappa was as a matter of fact the manager, being the senior most member, that Ramchandrappa acted in his

7733

personality capacity and for his sole benefit and that the Plaintiff is, therefore, not bound by the covenant for renewal.

8. The covenant for renewal was in these terms :- (Ex.38)

" And further that the lessee shall have the option of renewing the lease of the said premises for a further term of five years on giving notice of such intention to the lessor at least 3 months before the expiration of the lease hereby granted and the lessor shall forthwith execute and deliver to the lessee a renewed and duly registered lease of the said premises for such further term of years at the same rent and under the same conditions as are herein contained excepting only this condition as to renewal ".

The first question is whether the suit house belonged to the joint and undivided Hindu family. The second question is whether Ramchandrappa acted/in his capacity as manager of the joint family though he was not the senior most member. The next question is whether the plaintiff by reason of his conduct - expressly authorised the lease or subsequently ratifi--ed it. It is also alleged that there was a partition in 1944, that at such a partition the suit house fell to the shareof the plaintiff and that in consequence he is not bound by the lease which contained a covenant for renewal.

10. The plaintiff in his evidence marked as Ex. 43 swears that the suit house formed part of the joint family estate. The family owned considerable property. According to the evidence on the plaintiff's side the family income aggregated to 25000 a year. Evidence snows that the family owned 20 houses. There is no evidence to the contrary and my finding is that the suit house originally belonged to the joint family.

11. The next point taken on behalf of the plaintiff is that there was a division in 1944 and that at such a division the suit house fall to the share of the plaintiff. The Government pleader argued that the alleged division was a fictitious affair to wriggle out of the situation and to surmount the difficulty created by the covenant for renewal. Now it might be that the suit house was designedly allotted to the Plaintiff to enable him to institute a suit. It is also possible and even probable that the partition was effected resourcefully to enable the Plff to question the validity of the covenant for renewal. The fact of the matter is that the coparceners were entitled to effect a partition. If so, it is irrelevant to refer to the unfair motive which impelled the partition. The evidence shows that a partition was effected as a matter of fact. Therewas mutationof names in the City Survey Record. The plaintiff swears that after the partition ✗ income-tax was paid seperately. There is no evidence to the contrary and I hold that there was an oral partition in 1944 and that at such a partition the suit house fall to the Plaintiff's share.

12. I now turn to the lesse. The lease was entered into by Ramchandrappa with the Post and Telegraph Depart-ment on 16th June 1943 for a term of five years. There was a covenant for renewal of lease for a further period of five years. The Post and Telegraph Department within the time stipulated gave notice of their intention to take a renewal before the expiry of the term. The Post and Telegraph Department therefore refuses to quit till the expiration of the period.

13. The matter stands thus :- The suit house was purchased in 1927 and was therefore entered in the name of Ramchandrappa. The Post and Telegraph Department was to my mind justified in treating Ramchandrappa as ostensible owner of the suit house. The evidence on the Plaintiff's own

8/31

showing serves to show that Ramchandrappa acted in his capacity as manager with the implied or express consent of the other coparceners including the plaintiff. Now the Plaintiff in his evidence sought to show that he was not consulted when the lease was entered into. He however made the admission that the ~~kaa~~ houses were entered in the names of different coparceeners and they were letting out the houses so entered in their separate names. That being so, it is easy to reach the conclusion that the lease was entered with the implied consent of all the coparceners. He further made the ~~x~~ admission that Ramchandrappa credited the rental to the joint family khata. Further questioned his answer was " I and my brothers did not objection to the Post and Telegraph Department taking possession pursuant to the lease ". His admission that the rental in respect of the suit house was credited in the family account book shows that the lease was entered with his implied consent, that he ratified it, and that he profited by it.

14. The subsequent conduct shows that the point now taken before ~~the~~ me to the effect that Ramchandrappa was not the Manager and that the lease was not for the benefit of th family is an after-thought. This is what is stated in the lawyer's notice dated 16th Feb. 1948 given to the Post and Telegraph Department by Mr. C.K. Kerur Pleader on behalf of the plaintiff.

" " The Post Office building which is leased in the first instance for five years will expire on 16-6-1948. You want to exercise the option of renewing the lease for a ~~future~~ further peri of five years, which is not acceptable to my client. The lease was executed when the family was joint. Now during th partition of joint family estate, the Post Office building fallen to the share of my client, Laxmana, Parappa Karadi, The terms of the lease are not binding upon him. He wants occupy the said premises for his own residence. So kindly v the building at the expiration of the lease and oblige ".

85 39

15. It will be seen that in the lawyer's notice Ex. 37 no point was taken that Ramchandrappa did not act in his capacity as manager and that in consequence the plaintiff was not bound by the lease.

16. The law is that the manager can act of behalf of the family only with its consent express or implied. For certain purposes the law presumes consent of the family; where it does so, he possesses implied authority. When it is said that the manager has the power or implied authority to do a thing what is meant is that his act will bind the members of the family, including minors, without any express consent on their part. Family purposes include expenses of management, realisation and protection of the family estate, maintenance, education of the members etc. Family purposes will also include the ordinary purposes of the family business if any. Here the plaintiff rendered himself liable by reason of his conduct and by ratifying the lease. He allowed the plaintif to enter his own name in the City Survey Record. On his own showing he authorised him to let out the house. I hold that the Ramchandra acted in his capacity as manager with the consent, express or implied of the plaintiff and one other member of the joint family.

17. Now a lease may contain a covenant for renewal, that is a covenant to grant a renewal of the lease either at the end of of term, or at some stated period within the term. Such a covenant confers an immediate right to a further term, and as the convenant runs with the land it is exercisable by the assignees of the lessee and binds the assignees of the lessor. My finding is that the Post and Telegraph Department (lessee) willnot lose their right of renewal simply because there was a division by which the house fell to the share of a copareener who was not the lessor.

18. The suit was instituted on 15-10-1948 against " The Governor General in Council ". The Plaintiff gave notice on 28-6-1948 indicating his intention of proceeding against

7/41

the defendant " Governor-General in Council, now Dominion of India after August 15,1947 ". Then on 4-1-1950, an application was made to the Court to amend his plaint as follows :-

Instead of"Governor General in Council " in the title of the suit, " The Dominion of India " may be mentioned. The amendment is with respect to a misdescription of the defendant which is objected to by the defendant in para 1 of his written statement. The correction is to be made in terms suggested by the defendant. It is prayed therefore that the Plaint may be ordered to be amended ".

18. To my mind, there is a differance between " Governor General in Concil " and " Dominion of India ". The legal entity after August 15, 1947, was the Dominion of India and not " The Governor General in Council ". It is noticeable that the notice was rightly served on the Dominion of India. The powers of the Court to amend pleadings under the amended Civil Procedure Code in the interests of Justice are very wide. I allow the amendment sought and treat the suit as one against the"Dominion of India ". The suit is therefore tenable against the"Dominion of India ".

19. In the result, the suit fails and is dismissed with costs."

December 14,1950.

Sd/ A.C. Sequira.
Civil Judge, Sr.Dn.
Bijapur.

"True Copy"

Dist. Govt. Pleader
Bijapur

91/43

Civil Suit No. 421 of 1948.

In the Court of the Civil Judge, (Senior Division)

Bijapur.

1. Laxmeppa Perappa Karadi ,Devang(Hindu) age 46,
Occupation Trade, residing at Ilkal, Taluka
Hungund, Dist: Bijapur. Plaintiff.

Vs.

1. The Dominion of India". The summons to be served
on the Govt. Pleader Bijapur. Amended as per Exh.18.

4-1-50 Sd. A.C.Sequeira
Civil Judge,S.D.

.... Deft.

Claim Rs. 258/-.

The plaintiff states as follows :-

1. The plaintiff is the full and exclusive owner of a hou
situate on C.T.S. No. 900/C-2 of the town of Ilkal in Hungu
taluka. This suit is for possession of the said ho use fro
post & Telegraph Department of the defendant to which it h
been leased on a five years' lease by one Ramachandra Pa
Karadi, expiring on 16-6-1948, arrears of rent due as well
damages for the unauthorised use and occupation thereof fr
16-6-1948 till recovery of possession.

2. The suit house was the property of the Hindu undivid
family consisting of the plaintiff, his brothers including
Ramachandra and their uncles. The coparceners of the famil
came to a partition of their joint ancestral properties of
the suit house was one, on 30-11-1947 and the plainti f
suit house and several other properties to his share;
then he is the full and exclusive owner thereof and th
house has been entered inthe ity Survey Register in the
the plaintiff. Since the date of the partition the plai
entitled to the rent of the suit house and to claim po
of the suit house on the expiry of the lease period.

3. The plaintiff after the partition has no house for his own residence and very badly wants to reconstruct the suit house at considerable expense and to use it as a residence for himself. Accordingly he gave oral and written notices to the Postal authorities concerned, well in advance of the date of expiry of the lease to vacate the suit house on the expiry of the lease period, mentioning the purpose for which he required it and also to pay him the rent due by them till the date of the expiry of the lease. Unfortunately the said authorities persisted in refusing to do so, even though Ramachandra assured them of the truth and propriety of the plaintiff's claim; on the other hand, they called upon the plaintiff to execute a lease for a further period of five years from 16-6-1948 in accordance with an alleged contract embodied in the deed of lease executed by Ramachandra giving a unilateral option to the lessee to require such a further lease to be executed by the lessor, if so required and declined to pay the rent due to the plaintiff on one excuse another. The plaintiff urged on their attention the illegality and impropriety of their stand but to no purpose. Even after a notice under S. 80 C.P.C. was served in accordance with law, more than three months ago, no amends have as yet been made to the plaintiff by the defendant and his subordinates of the Posts & Telegraph Department; the plaintiff has, under the circumstances, been driven by them to the unpleasant course of brining this suit.

The deed of lease ~~xxx~~ appears to have been executed by Ramachandra in his individual capacity describing the suit house therein as his own property. The agreement alleged to be embodied therein as to the option is without consideration and not binding even on Ramachandra. It is further of a personal nature and may if at all, bind Ramachandra alone. The agreement is in now way binding on the coparceners of the joint family so long as it was joint and is not at all binding either in law or equity on the plaintiff has become full owner and exclusive owner of the suit house after, in consequentof, the partition.

The plaintiff does not derive his claim to the suit house through Ramachandra but by virtue of a right vested in the plaintiff long before Ramachandr,'s lease. The plaintiff does not claim the suit house, under Ramachandra but independently of him.

5. The agreement in question cannot in law be enforced against the plaintiff as the defts' subordinates seek to do. The parties peculier circumstances of the case would render such enforcement, assuming it could be made, so inequitable, unconscionable and improper as to amount to a viloation of law regarding the judicial use of the Court,s discretion.

6. The action of the postal authorities in resisting the claim of the plaintiff is not in accordance with law or equity; the cause of actionfor this suit arose when they definitely refused to vacate the premises in March 1948.

7. The Court fees are paid on one Year's rent for possession, arrears of rent due @ Rs. 12 p.m. and damages @ 15/- p.m. for illegal use and occupation before suit (Rs. 144+54+60 = 258). The value for jurisdiction and pleader's fees is the same.

8. This suit being against Government has been brought in this Court. In view of the questions of fact and law involved in the case, this suit has been filed on the regular side, instead of as a Small Cause suit.

9. Notice under Section 80 C.P.C. has been served on the defendant in accordance with law more than twomonths before this suit. No definite reply has been vouchsafed to it as yet.

10. Prayer :-

1. Possession of the suit house be awarded to the plff from the defendant,s subordinates in the Post and Telegraph +Department concerned.

2. The arrears of rent due as claimed may be awarded to the plaintiff from the same.

3. Damages for the illegal use and occupation before suit, as claimed and further damages at the same rate from the date of suit till recovery of possession by the plaintiff may be awarded to the plaintiff.

4. Costs of suit may be awarded.

5. Any further or other relief the plaintiff may be found to be entitled to , may be awarded.

The suit came for hearing to day 14-12-1950 before Shri. C.Sequeira, Civil Judge, Sr.Dn., Bijapur, in the presence of Shri. M.F.Desai for the plaintiff and shri. K.R.Rao for the defendant and the suit is decreed as under :-

In the result, the suit fails and is dismissed with costs.

BILL OF COSTS:

Plaintiff		Defendant:	
	Rs. As.Ps		
1. Plaint	24- 6-0	Stamps to exhs. 7to 15 and 32	6- 4-0
2. Vakalat	0-10-0	Pleader's fee	15- 0-0
3. Pleader's fee	15- 0-0		21 - 4-0
4. Process fee	2- 4-0		
5. Bhatta to witnesses	12 - 4-0	Stamps to exhs. 7 to 15 and 32. disallowed	6- 4-0
6. Stamps to exhs. 18,19,24,26&27.	3- 2-0		
	57-10-0		
Stamps to exhs. 18,19,24,26&27. disallowed.	3- 2-0		
	54-8-0		

Given under my hand and seal of the Court this day the 14th Dec. 1950.

Sd/- S.H.Nesari
Clerk.

True Copy
K.Rao
Asst. Govt. Pleader
Bijapur

Sd/- R.C.Sequeira
Civil Judge, Sr.Dn.,
Bijapur. 9-1-1951

Pleader for plff.

Pleader for deft.

Suits.
Bijapur.
For possession of a house in the village of Ilkal (Taluka Hundgund) which was taken on lease by the Central Government for the Post and Telegraphs Office.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 1533
Bombay Castle, 24th January 1951.

Read Government Resolution, Legal Department No.12651 dated the 9th November 1951.

Endorsement from the District Government Pleader, Bijapur No.855, dated the 25th December 1950, stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Bijapur on 14th December 1950, when the following order was passed:-

In the Court of the Civil Judge (Senior Division).
Bijapur Civil Suit 431 of 1948
Laxmappa Parappa Karadi..... plaintiff.
versus.
The Governor General in Council.Defendant.

" The suit fails and is dismissed with costs."

Endorsement from the District Government Pleader, Bijapur No.47, dated the 16th January 1951, forwarding uncertified copies of the judgment and decree.

RESOLUTION: The result of the suit is recorded.

By order of the Governor of Bombay,

original

E.P.BHAMGARA;
Additional Assistant Secretary to Governmen

Issued cop 24/1

To
The Political & Services Department,
The Post Master General, Bombay,
The District Government Pleader, Bijapur.

KML/23

Submitted for sign
DE 23/1 AAS.

481

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 1831
Bombay Castle, January 1951.

Read Government resolution, Legal Department No.3881 dated the 9th November 1951.

Endorsement from the District Government Pleader, Bijapur No.855, dated the 28th December 1950 stating that the suit noted in the margin was decided by the Civil Judge,Senior Division, Bijapur on 14th December 1950, when the following order was passed:-

In the Court of the Civil Judge (Senior Division). Bijapur Civil Suit 431 of 1948 Laxmappa Parappa Kuradi.....Plaintiff. versus. The Governor General in Council.Defendant.	No.855, dated the 28th December 1950

" The suit fails and is dismissed with costs."

Endorsement from the District Government Pleader, Bijapur No.47, dated the 10th January 1951, forwarding uncertified copies of the judgment and decree.

RESOLUTION: The result of the suit is recorded.

By order of the Governor of Bombay,

E.P.RAMGARH,
Additional Assistant Secretary to Government.

To,
The Political & Services Department,
The Post Master General, Bombay,
The District Government Pleader, Bijapur.